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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/060,142	02/01/2002	John David Melius		9755

7590

08/23/2002

John David Melius  
2725 Vista Court  
Waldorf, MD 20603

EXAMINER

BASINGER, SHERMAN D

ART UNIT

PAPER NUMBER

3617

DATE MAILED: 08/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/060,142

Applicant(s)

MELIUS, JOHN DAVID

Examiner

Sherman D. Basinger

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-20 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 1082 of page 23, line 11. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "1101" has been used to designate both the flexible afterbody of page 14, line 17 and the grooves of page 15, lines 9, 11, 14 and 18. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "108" has been used to designate both flexible blade of page 23, line 4 and the sole portion of page 23, line 5. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance. Additionally, reference numeral "108" is used to designate the sandal of page 29, line 15 and the insole of page 30, line 11.
4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the embodiment

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having the symmetrical tail fin of claim 8 and in addition the tail fin of claim 9 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the embodiment having at least one upper securing strap and a separate rear securing strap of claim 8, and, in addition, having a flexible securing strap extending over the tarsus portion of a user's foot and an adjustable length heel strap of claim 15 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the swim fin having the symmetrical tail fin of paragraph e of claim 17 and, in addition, the tail fin of claim 18 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

7. In order for applicant to obtain the benefits of the provisional patent application filed February 2, 2001, the serial number of that application should be inserted in the appropriate lines on page 2 of the specification.

8. Each patent referenced in the specification has been considered.

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claims 9, 15, 16 and 18 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant has failed to describe in detail the ergonomic swim fin which has the symmetrical swim fin of paragraph e of claim 8 and, in addition, the tail fin having a centrally disposed extended neck portion and left and right symmetrical fin portions of claim 9.

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Applicant has failed to describe in detail the ergonomic swim fin which has at least one upper securing strap to secure the user's foot to the foot plate and a separate rear securing strap positioned to releasably secure the user's heel to the foot plate both of paragraph b of claim 8, and in addition, a flexible securing strap extending over the tarsus portion of a user's foot and an adjustable length heel strap positioned between opposing sides of the foot pocket, both of claim 15.

Applicant has failed to describe in detail such it can be made and used the ergonomic swim fin having a symmetrical tail fin of paragraph e of claim 17 and, in addition, a tail fin as defined in claim 18.

In amending the disclosure, new matter should not be entered.

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 5, 8-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 is ambiguous in line 2 as the "opposing channeling scoops" are claimed for a second time having first been claimed in paragraph c of claim 1. Correction can be made by inserting –said- after "with" in line 2.

In claim 8 "the flexible foot plate" of lines 5-7 has no clear antecedent and should be corrected to: the stiff foot plate.

Claim 10 is ambiguous in line 3 because applicant claims for the second time the "opposing curved channeling scoops". The scoops are first claimed in parent claim 8,

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paragraph c. In claim 10 –said- should be inserted before “opposing curved channeling scoops” in line 3.

Claim 11 is ambiguous in line 2 because applicant claims for the second time the symmetrical tail which is first claimed in parent claim 8, paragraph e. In claim 11, “a” before “symmetrical” should be changed to –said-.

Claim 17 is ambiguous in paragraph d as the flexible blade is claimed for the second time. The flexible blade is first claimed at the end of paragraph a of claim 17. The first “a” in paragraph d of claim 17 should be changed to –said- or –the-.

In claim 20 “the portion of the flexible blade” has no clear antecedent. In claim 20 “the” before “portion of the flexible blade” could be changed to –a-.

***Claim Rejections - 35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 1, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown et al.

The stiff foot plate is 10. The one securing strap is 20. The opposing channeling scoops are formed by flaps 11 and 12.

The small grooves of claim 7 are formed between the ribs on the top of sole 10 forward of the foot pocket.

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 2, 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al in view of Chang.

The flexible blade of Brown et al is the portion of sole plate 10 forward of the toe pocket

18.

Brown et al does not disclose the symmetrical tail fin selectively attached and removed upon the distal end of the flexible blade.

Chang discloses a symmetrical tail fin selectively attached and removed from his ergonomic fin which is attached forward of the toe pocket.

In order to increase the efficiency of the shoes of Brown et al it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to provide a fastening plate and symmetrical fin similar to those of Chang to the flexible blade of Brown et al.

The central neck portion of the tail fin would be similar to portion 21 of Chang. The securement means would be similar to screws 3 of Chang.

The rigid forebody of the fin resulting from the combination of Brown et al and Chang would be that portion of the shoe of Brown et al including toe pocket 18 and heel pocket

19. To make the length of the combination of the tail fin and shoe of Brown et al and



Chang such that the rigid forebody is 40-80% of the length of the combination would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. To have the rigid forebody 40% of the length is reasonable, especially in view of the length of the shoe in Chang.

***Allowable Subject Matter***

17. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

18. Claims 8, 10-14, 17, 19 and 20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

***Conclusion***

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. WO01/85266 is cited to show the fin with opposing channeling scoops formed by flap formations 38. Melius is applicant's prior patent.

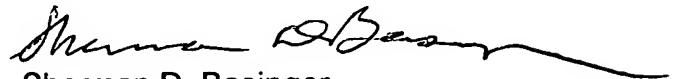
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherman D. Basinger whose telephone number is 703-308-1139. The examiner can normally be reached on M-F (6:00-2:30 ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 703-308-0230. The fax phone numbers for the organization where this application or proceeding is assigned are 703-

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872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
Sherman D. Basinger  
Primary Examiner  
Art Unit 3617

sdb  
August 21, 2002